IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

OP.No. 21762 of 1999(N)

PETITIONER:

M/S.MOTISONS INTERNATIONAL,
A PROPRIETORY, CONCERN,
HAVING ITS HEAD OFFICE AT 401-A,
VYAPAR BHAVAN, 368/70, NARSI NATHA STREET,
MUMBAI 400 009 AND BRANCH OFFICE
AT 10, KUSUMA MARKET, K.N. SETTYPET,
BASAVANNA LANE, BANGALORE 560 002, REP.BY
ITS PROPRIETOR, SHRI ADITYA AGARWAL.

BY ADV. SRI.JOSEPH KODIANTHARA
SRI.THOMAS VELLAPPALLY

RESPONDENTS:
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1. **UNION OF INDIA, THROUGH THE SECRETARY,**
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,
NEW DELHI AND SECRETARY, MINISTRY OF COMMERCE,
UDYOG BHAVAN, NEW DELHI.

2. **THE COLLECTOR OF CUSTOMS, COCHIN,**
CUSTOMS HOUSE, COCHIN 682 009.

3. **THE ASSISTANT COMMISSIONER OF CUSTOMS**
(APPRAISING IMPORT), CUSTOMS HOUSE,COCHIN – 9.

4. **THE CUSTOMS , EXCISE & GOLD (CONTROL),**
APPELLATE TRIBUNAL, SHASTRI BHAVAN ANNEXE,
HADDOWS ROAD, MADRAS.

5. **COCHIN PORT TRUST, REP.BY THE TRAFFIC MANAGER,**
WILLINGDON ISLAND, COCHIN.

BY ADV. SRI.P.S.SREEDHARAN PILLAI, SCGSC
SRI.E.K.NANDAKUMAR
SRI.JOHN VARGHESE, ASSISTANT SG
SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER NO.35862/1999 IN OP. 21762/1999

DISMISSED

20.06.2007 **SD/- KURIAN JOSEPH, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER DT. 23.4.93 OF THE 2ND RESPONDENT.

EXT.P2:- COPY OF THE INTERIM ORDER DT.10.1.96 OF THE KERALA HIGH COURT IN OP. NO.7741/1993.

EXT.P3:- COPY OF THE LETTER DT. 14.2.96 OF THE PETITIONER'S CLEARING AGENT TO THE 3RD RESPONDENT.

EXT.P4:- COPY OF THE LETTER DT. 22.2.96 OF THE PETITIONER'S CLEARING AGENT TO THE 3RD RESPONDENT

EXT.P5:- COPY OF THE LETTER DT. 23.2.96 OF THE PETITIONER'S CLEARING AGENT TO THE 5TH RESPONDENT.

EXT.P6:- COPY OF THE JUDGMENT DT. 20.3.97 OF THE KERALA HIGH COURT IN OP. NO.7741/93.

EXT.P7:- COPY OF THE ORDER DT. 9.5.97 OF THE 4TH RESPONDENT.

EXT.P8:- COPY OF THE ORDER DT. 13.8.97 OF THE 4TH RESPONDENT ALONG WITH THE COVERING LETTER.

EXT.P:- COPY OF THE ORDER DT. 30.3.99 OF THE 4TH RESPONDENT.

EXT.P10:- COPY OF THE OBANK GUARANTEE ALONG WITH LETTER DT . 24.12.96 FORWARDED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P11:- COPY OF THE LETTER DT. 7.5.99 OF THE PETITIONER TO THE 3RD RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

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KURIAN JOSEPH J.

O.P. NO.21762 OF 1999

Dated 20th June, 2007.

J U D G M E N T

The writ petition is filed mainly with the following prayers :-

> (i) "To direct the 2nd and 3rd respondents by a writ of mandamus or such other appropriate writ, direction or order to give full effect to Ext.P8 order passed by the 4th respondent Tribunal and in this regard to
>
> (a) return Ext.P10 bank guarantee furnished by the petitioner under Ext.P2 order of this Hon'ble Court and thereafter renewed under Ext.P8 order of the 4th respondent.
>
> (b) to pay back the amount of Rs.4,89,785/- collected from the petitioner under Section 47(2) pursuant to Ext.P2 interim order of this Hon'ble Court along with interest thereon at the rate of 18% per annum.
>
> (c) issue a detention certificate and take all necessary steps and action for reimbursement of the demurrage of Rs.2,50,318/- paid by the petitioner to the 5th respondent and to issue appropriate directions to the 5th respondent also in that regard/direct the 5th respondent to refund the amount of Rs.2,50,318/- paid as demurrage by the petitioner and claim the same from the 2nd and 3rd respondents if necessary."

It is submitted that in view of Ext.P8, action on Ext.P11 should have been taken by the second respondent. There will be a direction to the second respondent to look into Ext.P11 with notice to the petitioner and the 5th respondent, and take appropriate action thereon in accordance with law, adverting to the contentions taken by the parties, within a period of three

months from the date of production of a copy of the judgment.

The writ petition is disposed of as above.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J.

O.P. NO.21762 OF 1999 (N)

J U D G M E N T

Dated 20th June, 2007.